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IN THE

Supreme Court of the United States

October Term, 1957

No. 33

MICHAEL WILSON, et al.,
Petitioners,

vs.

LOEW'S INCORPORATED, a corporation, et al.,
Respondents.

ON WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEAL, SECOND APPELLATE DISTRICT, STATE OF CALIFORNIA, DIVISION THREE

MOTION OF AMERICAN CIVIL LIBERTIES UNION FOR LEAVE TO FILE A BRIEF AS *AMICUS CURIAE*

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The American Civil Liberties Union, hereinafter called the Union, respectfully moves for leave to file a brief *amicus curiae* in this case. The attorney for the petitioners consented to the filing, but the attorney for the respondents has refused consent.

The Union is a long-established nationwide nonpartisan organization devoted to the advancement of civil liberties, and its affiliate, Civil Liberties Union of Southern California, filed a brief in support of the petition herein with consent of the parties. The Union's interest in the instant case stems primarily from its concerns that Congressional

investigating committees confine themselves to their authorized and Constitutional functions, and also that no one suffer an arbitrary and unreasonable deprivation of liberty or property because of invocation of the Fifth Amendment's privilege against self-incrimination. Though these issues are presented by the instant case and have been raised by petitioners in the State courts and in the petition for a writ of certiorari, the treatment of them heretofore and the emphasis on other issues suggests a strong likelihood that important aspects of them may not be fully treated by the parties.

The complaint in the instant case, which was dismissed by the court below for failure to state a cause of action (142 A. C. A. 191, 298 P. 2d 152), seeks both an injunction and damages. The respondents are members of the House Un-American Activities Committee and two of its employees, as well as a number of corporate and individual motion picture producers and distributors. The respondent producers and distributors, according to the complaint, substantially control motion picture production and distribution in the United States and employment opportunities in the industry. The essence of the complaint is that the Congresisonal Committee respondents and the industry respondents agreed that there should be an exclusion from further employment in the industry of any person who refused on constitutional grounds to answer questions on political affiliations and beliefs, and of anyone who failed or refused to appear before the Committee and waive constitutional rights and testify concerning political affiliations and beliefs of themselves, members of their families, and friends. The purpose of the agreement, as alleged in the complaint, was to limit employment in the motion picture industry to persons acceptable to the Committee. As part of this agreement and to effectuate it, both Committee and industry respondents, according to the complaint, published and circulated among all employers in the industry a list of those disqualified from further employment on the

grounds of their aforesaid conduct before the Committee. The petitioners allege that they are actors, writers, and other employees of long standing in the industry who have been refused and excluded from employment pursuant to this agreement and listing.

Though the validity and constitutionality of the conduct of the Committee respondents appears to be within the scope of the questions raised in the State courts and presented by the petition for certiorari, petitioners' arguments have mainly dwelt on the activity of the industry respondents who have the power to grant or withhold employment from petitioners. Less attention is paid to the role of the Committee respondents in excluding petitioners from their calling although, according to the complaint, it appears to be as great as the role of the industry respondents. Petitioners' apparent choice of emphasis is understandable in view of their ultimate objective to obtain damages for lost employment and future employment opportunities. The Union, however, with no pecuniary interest in the litigation, would develop those aspects of the case of greatest concern from the public and governmental standpoint—in particular, the effect of the Committee respondents' participation in the alleged agreement, listing, and exclusion from employment upon the petitioners' rights to relief in this action. Consideration of the Committee's activity is of particular moment because of the principles so recently enunciated by this Court in *Watkins* v. *United States*, decided June 17, 1957 (Oct. Term, 1956, No. 261). Because the instant case involves the extent of power of Congresisonal investigating committees over the status and economic well-being of the individual, it affects much more than the private litigants in this suit, and it is appropriate that an *amicus* interested from the public standpoint be allowed to participate.

In addition to the question whether the Committee respondents' alleged conduct in concert with the industry respondents deprived the petitioners of rights without due

process of law, as claimed in the petition, the Union's brief would also develop the argument that there was a lack of due process and equal protection of the laws, in that the decision below discriminatorily refused to give petitioners the benefit of California law establishing that an exclusion from one's calling is a basis for a cause of action. This refusal, assertedly for lack of a sufficiently specific allegation in the complaint that a particular exercise of a petitioner's vocation was interfered with, avoided any consideration of the scope and any violation of the Fifth Amendment's privilege against self-incrimination and this Court's interpretations and expositions of its meaning. While petitioners raise the issue that the judgment of the California court violated due process and equal protection, they have not argued this aspect of the question.

If this motion for leave to file a brief is granted, the Union also respectfully moves that it be granted a period of two weeks from the time of notice of the grant for printing and filing of its brief, which has not been completed pending determination of this motion.

Respectfully submitted,

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